File No. HE20090016

LAW SOCIETY OF ALBERTA

HEARING COMMITTEE REPORT

IN THE MATTER OF the *Legal Profession Act* (the "LPA"); and

IN THE MATTER OF a hearing (the "Hearing") regarding the conduct of Barry M. King, a Member of the Law Society of Alberta

INTRODUCTION

[1] On April 26, 2010, a Hearing Committee (the "Committee") of the Law Society of Alberta ("LSA") convened at the LSA office in Calgary to inquire into the conduct of Barry M. King, a Member of the LSA. The Committee was comprised of Anthony G. Young, Q.C. Chair, James A. Glass, Q.C., Bencher and Kevin S. Feth, Q.C., Bencher. The LSA was represented by Janet L. Dixon, Q.C. The Member was present at the Hearing and represented by Donald R. Cranston Q.C. Also present at the Hearing was a Court Reporter to transcribe the Hearing.

[2] The Chair introduced the Committee and asked the Member and Counsel for the LSA whether there was any objection to the constitution of the Committee. There being no objection, the Hearing proceeded.

JURISDICTION PRELIMINARY MATTERS AND EXHIBITS

[3] Exhibits 1 through 4, consisting of the Letter of Appointment of the Committee, the Notice to Solicitor pursuant to section 56 of the LPA, the Notice to Attend to the Member and the Certificate of Status of the Member with the LSA established the jurisdiction of the Committee.

[4] The Certificate of Exercise of Discretion pursuant to Rule 96(2)(a) and Rule 96(2)(b) of the Rules of the LSA ("Rules") pursuant to which the Director, Lawyer Conduct of the LSA, determined that the persons named therein were to be served with a Private Hearing Application was entered as Exhibit 5. Counsel for the LSA advised that the LSA did not receive a request for a private hearing. The Chair inquired of Counsel for the Member whether he wished to make a Private Hearing Application and he declined. Accordingly, the Chair directed that the Hearing be held in public.

[5] Exhibits 1 through 40 contained in the Exhibit Book provided to the Committee and the Member were entered into evidence in the Hearing with the consent of the Committee and Counsel for the LSA and the Member.

CITATIONS

[6] The Member faced the following Citations:

1. IT IS ALLEGED THAT you failed to comply with an undertaking given to a Justice of the Court of Queen's Bench to file an Order at Land Titles, and that such conduct is conduct deserving of sanction.

2. IT IS ALLEGED THAT you failed to comply with an undertaking given to a Justice of the Court Queen's Bench to file a Certificate of *Lis Pendens*, and that such conduct is conduct deserving of sanction.

3. IT IS ALLEGED THAT you failed to comply with an undertaking given to a Justice of the Court of Queen's Bench to file a caveat, and that such conduct is conduct deserving of sanction.

4. IT IS ALLEGED THAT you failed to comply with an Order of the Court of Queen's Bench to invest funds held in your trust account in an interest-bearing account, and that such conduct is conduct deserving of sanction.

5. IT IS ALLEGED THAT you failed to comply with undertakings given to a Justice of the Court Queen's Bench and opposing counsel on September 13, 2007, and that such conduct is conduct deserving of sanction.

6. IT IS ALLEGED THAT you applied for a desk divorce contrary to a written request by opposing counsel not to take any further steps, and that such conduct is conduct deserving of sanction.

7. IT IS ALLEGED THAT you failed to withdraw from a matter in which it was evident you would be a material witness, and that such conduct is conduct deserving of sanction.

SECTION 65 APPLICATION

[7] At the opening of the Hearing, there was a joint application by counsel for the LSA and counsel for the Member pursuant to section 65 of the *Legal Profession Act* to amend three of the citations. Section 65 states:

> "65. Subject to the rules, a Hearing Committee may at any time during a hearing before it
>
> (a) amend any notice given to the member under section 59(1)(a), or
>
> (b) deal with any other conduct of the member that arises in the course of the hearing,

but in either event the Committee shall declare its intention to amend the notice or deal with the other conduct and shall permit the member sufficient opportunity to prepare the member's answer respecting the amendment or the other conduct."

[8] The parties proposed that citations 1, 2 and 3 be rolled into a new Citation, reading as follows:

1. IT IS ALLEGED THAT you failed to ensure that the order of Justice Slatter of September 15, 2006 was memorialized on title in circumstances where the opposite party was unrepresented, and that such conduct is conduct deserving of sanction.

[9] The joint submission of the parties was that the proposed consolidation and resulting amended Citation would more accurately reflect the events in question, and avoided overcharging the Member with three citations for essentially the same conduct.

[10] The Hearing Committee was satisfied that the proposed consolidation and amendment were proper, and allowed the application to amend.

SUMMARY OF RESULTS

[11] The Member tendered an admission of guilt on the amended Citation 1, which was accepted by the Hearing Committee.

[12] No evidence was called on Citations 4, 5, and 6. Those Citations were dismissed.

[13] Evidence was called with respect to Citation 7; however, the Hearing Committee determined that Citation 7 was not made out and the citation was dismissed.

[14] The Committee found that a reprimand, together with the payment of the actual costs of the Hearing, was an appropriate sanction in the circumstances.

BACKGROUND AND EVIDENCE

[15] This matter arises out of a family law case that began in early 2004.

[16] The Member represented his client, the wife, in a divorce.

[17] The Complainant husband was unrepresented for some of the time that the matters in issue arose.

[18] On September 15, 2006 the Member appeared before Justice Slatter at the Court of Queen's Bench (the "Application"). The Complainant also appeared, representing himself.

[19] The relief that the Member was seeking was "the granting of a divorce and confirmation of the terms of a settlement agreement which was negotiated

between the parties." The impugned settlement included the payment of roughly $115,000 to the Complainant in settlement of property issues and support. The Member's client was to obtain financing for the settlement from the proceeds of a mortgage against the matrimonial house (the "House").

[20] Very early in the Application it became clear that the Member would not be able to deal fully with the relief that he was seeking. The Member, however, "wanted to ensure that the matter was at least spoken to and some direction received as to further steps being taken …"

[21] The Complainant was of the view that an oral settlement agreement had been made but that the settlement was conditional upon settlement funds being delivered two days after the agreement was made. The funds were not delivered by that day. The Complainant was also of the view that the calculation of spousal support was not correct.

[22] The Member was able to persuade the Court to permit his client to place a mortgage on the House in the amount of $115,000, with the mortgage proceeds to be held in the Member's trust account invested in some suitable instrument, and to remove the *Lis Pendens* protecting the Complainant's property rights. The raising of the amount of money was "without prejudice to any issues about the validity of the settlement." The Court also ordered that the Complainant have access to $5,000 from the proceeds to retain a lawyer.

[23] During the course of the Application there was a discussion between the Court, the Member and the Complainant with respect to the future disposition of the House. The Complainant wanted a direction that the House not be sold. The Member consented to an Order that his client not dispose of the equity in the House without further Court Order. Discussion on this point may be found at Page 19 Line 10 through 25 of the transcript of Court proceedings:

> "MR. KING: I'd consent to the order reflecting that she not dispose of the equity in the property without further Court order.
>
> THE COURT: Without further Court order. Yes, go ahead, put that in.
>
> MR. KING: And, sir, I'll register a caveat as solicitor.
>
> THE COURT: You don't need to re - - you can - - you can file the order.
>
> MR. KING: Well, I want to ensure that we don't run into problems with President's Choice, sir. I will file the order, but I will also file a solicitor's caveat just dealing - - essentially to protect [the Complainant] until we - -
>
> THE COURT: Okay.

MR. KING: - - until we get the matter done."

[24] During the application there were also a number of discussions between the Court, the Member and the Complainant with respect to counsel withdrawing in the matter. At page 5 line 27 and page 6 lines 1 through 6 the following conversation occurred:

> "THE COURT: Is this going to be a situation where you and Ms. Andersen [the Complainant's former counsel] are going to have to testify?
>
> MR. KING: Well, the parties were present. Their evidence might well be sufficient, but we certainly were, I guess, the scribes to the extent that we were - -
>
> THE COURT: Okay, well, keep that one in your back pocket, Counsel.
>
> MR. KING: Yes, I appreciate that, sir. It is one of those troublesome issues. I much prefer to ask the questions and answer them as you know, My Lord."

[25] The Complainant at page 12 line 23 through 27 made the following statement:

> [THE COMPLAINANT]: I feel like I've been taken advantage of because I got a brain injury and I - - the counsel that I had would have been a witness to this deal. That is why she - - she has - -she has ceased to act…"

[26] Again at page 22 lines 5 through 24:

> "THE COURT: And again you should reflect on your own situation here, Mr. King.
>
> MR. KING: Thank you, My Lord. I appreciate the advice and I will advise my client accordingly. There's lots of other competent counsel who can fill my shoes.
>
> THE COURT: .and once you get things going here maybe it will - - it will resolve itself, but - -
>
> MR. KING: Yes.
>
> THE COURT: Okay.
>
> MR. KING: I'll take your advice is direction not to appear on this matter again and that will probably solve some - - "

THE COURT: Well, in this stuff, to get it - -to get it going forward I think you're suited for it because you know the history, but if it looks like it is going to trial, that's when you have to reflect on your situation.

MR. KING: I'll have to step aside. I appreciate that, sir.

[27] The Member drafted an Order at the conclusion of the application and filed the same on October 1, 2006. The parts of the Order material to this Hearing are as follows:

"…

2. The *Lis Pendens* registered by [the Complainant] against title to the lands described as … shall be discharged from title.

3. The Plaintiff shall be entitled to register against title to the lands a mortgage in the amount of $115,000, which funds shall be paid into the trust account of the Plaintiff's solicitor, and be retained by the Plaintiff's solicitor until further Order of this Honourable Court.

…

5. The Plaintiff shall not dispose or encumber the lands except as permitted herein without further Order of this Honourable Court.

6. This Order may be registered at the Land Titles office for the North Alberta Land Registration District, notwithstanding the provisions of section 191 of the *Land Titles Act.*

…

10. Rule 323 is dispensed with."

[28] The Member did not ever register the Order, file a Certificate of *Lis Pendens* or a Caveat on behalf of the Complainant subsequent to the registration of his client's new mortgage. There was no evidence of any intention on behalf of the Member to defeat the claim of the Complainant to the equity in the House.

[29] The Member used the Order to have the Certificate of Lis Pendens filed by the Complainant removed from title on December 22, 2006. No further action was taken at that time.

[30] A mortgage with a face value of $177,990 was subsequently registered on April 5, 2007 against title by the Member's client through the Alberta Treasury Branches. The Member did not prepare or execute the security documentation.

[31] Although the face amount of the mortgage was $177,990 and the mortgage was set up as a line of credit, the maximum amount advanced on the mortgage throughout these proceedings was $115,000.

[32] The loan proceeds of $115,000 were deposited in the Member's trust account on September 26, 2007.

[33] On October 5, 2007 the Member received a letter from Counsel for the Complainant, Mr. Plupek, that stated, in part:

> "…That you confirm if there will be new counsel for your client for her examination on affidavits and, in particular, that you confirm your position about whether you will exclude yourself as counsel now that we are coordinating substantive proceedings, given that you cannot be both lawyer and a witness for the Examinations and Trial of the issue…"

[34] On October 9, 2007 the Member's associate, Mr. Tong, forwarded a reply to Counsel for the Complainant that stated, among other things that:

> "Mr. King's instructions are that he will continue to represent his client until such time, if such time arises, that it becomes necessary for him to act as a witness in this matter."

[35] On October 9, 2007, the sum of $5,000 was released pursuant to a subsequent Court Order to the Complainant's new counsel, as a retainer.

[36] On October 11, 2007 Mr. Plupek forwarded a detailed letter to the Member outlining his difficulties with the Member continuing as counsel. In particular, reference was made in the letter to Rule 10, Chapter 10 of the Law Society of Alberta's *Code of Professional Conduct* that states:

> "A lawyer must not act as counsel in any proceeding in which it is likely that the lawyer will give evidence that will be contested."

[37] Subsequently, on November 29, 2007, an application arose before Madam Justice Moreau for the recusal of the Member from the case. The issue of the Member's recusal could not be dealt with fully during this application.

[38] In particular, the following conversation occurred at page 17 lines 17 through 27 and Page 18 lines 1 through 4 of the transcript of proceedings:

> "THE COURT: …the only issue now is the issue of recusal, right?
>
> MS. KOSKA Yes.
>
> THE COURT: Okay, And I read your materials but I have not read the cases, but I would like to hear from Mr. King in terms of what his position is. Mr. King, where are you at on this issue?
>
> MR. KING: My position hasn't changed, My Lady, I spoke to the practice advisor who - -

THE COURT: Well, I am not sure you need to disclose what he or she said to you.

MR. KING: And the outcome of that discussion was that it is not at all clear at this point that my evidence will undoubtedly be required at trial. It may well be required at trial, that's a question which will, in part, have to be resolved - - …"

[39] On January 4, 2008 the Member's client confirmed to the Member that she had not used more than $115,000 against the Mortgage (Line of Credit) and that the then current balance was $95,564.59.

[40] On January 9, 2008 the Complainant's counsel made a successful application before Justice E. F. Macklin to have the Member removed as counsel from the family law proceeding . Justice E.F. Macklin opined at paragraph 19 through 21 of his decision that:

> "[19] While a court is always reluctant to deny a party his or her choice of counsel, the court must also protect the integrity of the system and do everything possible to prevent a possible delay of the trial or a mistral caused by counsel remaining on a file beyond a time when it is apparent that the counsel will be required to testify. Further, a delay in doing what will ultimately be required in any event may result in longer delays and inconveniences the parties and the court closer to the date of trial.
>
> [20] Finally, and importantly, counsel acting for a party at trial should have every opportunity to determine the tactics he or she will use throughout the proceeding to best advance the party's position. The tactics he or she might consider important should not be compromised by the current lawyers own assessment of appropriate strategic and tactical manoeuvres and his continued involvement beyond the time when it is clear he will be called upon to testify.
>
> [21] In short, it is my view that counsel for the Plaintiff who was present at the settlement meeting which he and his client say resulted in a settlement agreement is a crucial witness both as to the existence of an agreement as well as to the terms of that agreement. I can see no situation where that counsel would not be required to testify either in support of his own client's position or, if he cannot do so, as a witness for the Defendant. Clearly, his evidence as to the existence of an agreement will be contradicted by the Defendant or, perhaps by his own client if his evidence supports that of the Defendant."

SUBMISSIONS OF COUNSEL FOR THE LSA

[41] The Hearing Committee was informed that the Member was prepared to admit his guilt with respect to the amended Citation 1.

[42] Regarding Citation 7, Counsel for the LSA stated that the Member had an obligation to withdraw and that it was improper conduct that he did not. It was or ought to have been evident that the Member was to be a witness in the proceeding.

[43] In assessing the Member's conduct, regarding Citation 7, the Hearing Committee was urged to consider the wilfulness of the Member's actions.

[44] It was argued by counsel for the LSA that the Member was aware of the obligation to withdraw when it was raised by Justice Slatter in the hearing of September 26, 2006.

SUBMISSION OF COUNSEL FOR THE MEMBER

[45] With respect to Citation 7, Counsel for the Member argued that clients should not be deprived of the right to counsel of their choice, except where the requirement to do so is clear.

[46] The Complainant should not be "allowed to steer the ship" of the party opposite. The demand for the removal of the Member from the file was viewed as "strategic positioning", creating a disadvantage for the Member's client.

[47] If the client wanted the Member to continue as her counsel, her right should be respected to the extent possible. The client was aware that the Member would not be able to continue as trial counsel.

[48] Counsel for the Member relied upon the commentary of Rule 10 of the *Code of Professional Conduct* stating that the Member's conduct was specifically authorized therein. As such, he should not be sanctioned for the conduct set out in Citation 7.

DECISION

[49] Section 49 (1) of the *Legal Profession Ac*t states:

> "For the purposes of this Act, any conduct of a member, arising from incompetence or otherwise, that
>
> (a) is incompatible with the best interests of the public or of the members of the Society, or
>
> (b) tends to harm the standing of the legal profession generally,
>
> is conduct deserving of sanction, whether or not that conduct relates to the member's practice as a barrister and solicitor and whether or not that conduct occurs in Alberta."

a) Admission of Guilt on Amended Citation 1

[50] The Member appeared in Chambers on September 15, 2006, and in his role as an officer of the Court, assumed an obligation to take steps to protect the interests of the unrepresented Complainant.

[51] The Court relied on the Member's assurance in granting an order, which heightened the need for the Member to be diligent in complying with his obligation.

[52] As recognized by the Member, and acknowledged by his admission of guilt, it is not an answer that:

(a) The failure did not result in direct harm to the Complainant;

(b) There were no further registrations on title after the registration of the new mortgage; and

(c) There was no draw in excess of $115,000 on the Line of Credit.

[53] The fact is that there was no warning on title that would have prevented further registrations that might have jeopardized the Complainant's interest.

[54] It was simple good fortune that the Member's client was well informed about Justice Slatter's decision and well intentioned enough to abide with the spirit of the order. There was no other impediment to drawing down the Line of Credit in excess of $115,000. This left the Complainant unprotected.

[55] Therefore, the Hearing Committee accepted the Member's statement of admission of guilt on the amended Citation 1.

b) Citations 4, 5 and 6

[56] Citations number 4, 5, and 6 were dismissed as there was no evidence called with respect to these Citations.

c) Citation 7

[57] Chapter 10 of the *Code of Professional Conduct* offers guidance to the Lawyer as Advocate. The Statement of Principle states:

> "When acting as advocate, a lawyer has a duty to advance the client's cause resolutely and to the best of the lawyer's ability, subject to limitations imposed by law or professional ethics."

[58] Rule 10 of Chapter 10 offers direct guidance regarding this matter:

> "A lawyer must not act as counsel in any proceeding in which it is likely that the lawyer will give evidence that will be contested."

[59] Further instruction is offered by the commentary to Rule 10 which states:

> "A lawyer's objectivity and the impartiality of a proceeding will be called into question if the lawyer combines the roles of advocate and witness. Consequently, if a lawyer or firm member will be required to give contested evidence in a proceeding, the lawyer may not act as counsel during that proceeding.
>
> "Proceeding", for the purposes of Rule #10, is intended to refer to a particular proceeding or stage of a matter, such as an interlocutory proceeding or trial. If the proceeding in question is a trial, it is therefore permissible for the lawyer to act up to the eve of trial provided that the client has been apprised of the disadvantages, such as additional expense, in having replacement counsel prepared and available to assume conduct of the matter at trial. In addition, the lawyer may act as counsel in subsequent stages of a matter after giving evidence at a pre-trial proceeding in that matter, so long as the proceeding in question completely resolves the issue with respect to which the lawyer's evidence was required. It follows that a lawyer who has acted in pre-trial proceedings but has then given evidence at trial may not act as appeal counsel if the lawyer's evidence at trial remains in issue on the appeal.
>
> Rule #10 is intended to apply to proceedings before any decision-making body to the extent that the rule is not inconsistent with rules of procedure established by the body in question.
>
> Rule #10 does not prohibit a lawyer from representing another firm member, or the firm itself, when that person or firm is in the role of a client."

[60] In the present case, the Member's understanding was that he would not be a witness until the trial of the matter. He believed that he was authorized by the *Code of Professional Conduct* to continue to resolutely act on behalf of his client until the eve of trial. His intention was to withdraw as counsel close to the trial date, apparently in the hope that the action would settle before trial, and his client would then be spared the cost and delay associated with retaining and instructing another lawyer.

[61] The Member consulted with the LSA's Practice Advisor, who did not advise him to cease to act.

[62] On January 9, 2008, the Complainant brought an application before the Court of Queen's Bench to disqualify the Member from continuing to act. The Member opposed the application on behalf of his client. In doing so, the evidence is that the Member was acting in the best interests of his client to prevent what was perceived as "strategic positioning" by the party opposite. There is no evidence to suggest that the Member opposed the application without his client's authority, or that he failed to advise his client about the disadvantages of a late withdrawal as counsel, or that he was motivated by self-interest. At the time of the application, the action was not yet at the "eve of trial".

[63] The Court determined that the Member should be disqualified from continuing to act for his client, holding that the interests of the administration of justice outweighed the client's choice of counsel. The Court's found that the Member would likely be a necessary witness at trial, and that his client's interests would be best served by an immediate disqualification. However, the Court did not find that the Member had breached any ethical duty owed to his client by opposing the application.

[64] A successful application to disqualify a lawyer does not automatically give rise to a breach of ethical duty. Legal counsel and their clients may have a genuine disagreement about the proper point in time at which a lawyer, who may be required to testify at trial, should withdraw as counsel for one of the parties. A myriad of factors may be relevant, and judicial guidance may be necessary to resolve the dispute. That was the situation here.

[65] The Member had a reasonable and ethical basis to persist in representing his client's interests. While his view did not find favour with the Court, that did not reduce his judgement call to conduct deserving of sanction.

[66] As such, the Hearing Committee concluded that Citation 7 was not made out and dismissed the citation.

SUBMISSIONS OF THE LSA ON SANCTION

[67] Counsel for the LSA argued that the Member's failure as made out in Citation 1 was more egregious than the breach of an undertaking between counsel. The Member failed to honour his commitment to act in a manner consistent with the expectations of the Court. General deterrence and the denunciation of the Member's conduct would be served by a fine, or alternatively, a reprimand.

SUBMISSION OF THE MEMBER ON SANCTION

[68] Counsel for the Member stated that the Member's misconduct was inadvertent. The Member acknowledged the misconduct and was contrite. There was no attempt to take advantage of a client. The appropriate sanction was no more than a small fine.

SANCTION AND COSTS

[69] In determining an appropriate sanction, the Hearing Committee is guided by a purposeful approach, which seeks to ensure that the public is protected, that high professional standards are preserved, and that the public maintains confidence in the legal profession.

[70] In *McKee v. College of Psychologists (British Columbia*), [1994] 9 W.W.R. 374 at page 376, the British Columbia Court of Appeal articulated the following principles, which are equally applicable to the disciplinary process for the legal profession:

> "In cases of professional discipline there is an aspect of punishment to any penalty which may be imposed and in some ways the proceedings resemble sentencing in a criminal case. However, where the legislature has entrusted the disciplinary process to a self-governing professional body, the legislative purpose is regulation of the profession in the public interest. The emphasis must clearly be upon the protection of the public interest, and to that end, an assessment of the degree of risk, if any, in permitting a practitioner to hold himself out as legally authorized to practice his profession. The steps necessary to protect the public, and the risk that an individual may represent if permitted to practice, are matters that the professional's peers are better able to assess than a person untrained in the particular professional art or science."

[71] Various factors may be taken into account when deciding how the public interest should be protected, including: a) the nature and gravity of the proven misconduct, including the number of times it occurred; b) whether the misconduct was deliberate; c) whether the misconduct engages the respondent lawyer's honesty or integrity; d) the impact of the misconduct on the client or other person affected; e) general deterrence of other members of the legal profession; f) specific deterrence of the respondent lawyer from engaging in further misconduct; g) punishment of the offender; h) whether the offender has incurred other serious penalties or financial loss as a result of the circumstances; i) preserving the public's confidence in the integrity of the profession's ability to properly supervise the conduct of its members; j) the public's denunciation of the misconduct; k) the extent to which the offensive conduct is clearly regarded within the profession as falling outside the range of acceptable conduct; and l) imposing a penalty that is consistent with the penalties imposed in similar cases.

[72] In addition, the Hearing Committee considers mitigating circumstances that may temper the sanctions to be imposed, including: a) the respondent lawyer's attitude since the misconduct occurred; b) the prior disciplinary record of the offender, including whether this is a first offence; c) the age and inexperience of the lawyer; d) whether the individual has entered an admission of guilt, thereby showing an acceptance of responsibility; e) whether restitution has been made to the person harmed; and f) the good character of the offender, including a record of professional service.

[73] The Member failed to honour a commitment made to the Court. As an officer of that Court, he had a duty to comply with that commitment. His failure to do so risked bringing the administration of justice into disrepute. Consequently, the nature of the misconduct is significant.

[74] Balanced against the nature of the misconduct is the gravity of the infringement. The Hearing Committee accepts that the misconduct occurred through inadvertence. Further, the Complainant suffered no loss as a consequence of the Member's failing.

[75] The Member has practiced for approximately 18 1/2 years and has no prior disciplinary history.

[76] By his admission of guilt and testimony before this Panel, the Member has demonstrated that he understands the error he committed. The Hearing Committee accepts that he is contrite.

[77] The risk of future misconduct appears to be low.

[78] Having regard to the sanctioning principles outlined above, the Hearing Committee was satisfied that the public interest would be served and the reputation of the profession protected by a reprimand in lieu of a fine.

[79] A reprimand has serious consequences for a lawyer. It is a public expression of the profession's denunciation of the lawyer's conduct. For a professional person, whose day-to-day sense of self-worth, accomplishment and belonging is inextricably linked to the profession, and the ethical tenets of that profession, it is a lasting reminder of failure. And it remains a lasting admonition to avoid repetition of that failure. Deterrence and the future protection of the public interest are therefore served accordingly.

[80] The Hearing Committee made the following Orders:

a. An Order that the Member be reprimanded;

b. An Order that the Lawyer pay the Law Society the actual costs of the Hearing;

c. An Order that the Lawyer be given time to pay the actual costs of the Hearing, not to exceed two weeks from the date of service of the Statement of the Actual Hearing Costs on the Lawyer.

[81] The Chair delivered the reprimand, which expressed denunciation for the conduct of an experienced member of the Bar whose behaviour failed the public interest and his profession. The reprimand included the following remarks (paraphrased):

> When lawyers make any representation, especially with respect to the protection of the weak or the unrepresented, it is a very serious matter. In such circumstances if a lawyer gives a material assurance that he will do something then it must be done.
>
> The importance of an assurance is heightened if it is given in Court. Such an assurance is of the highest importance when that assurance has been given with the intent or effect that the assurance will be relied upon in the granting of relief or in the conduct of a matter involving unrepresented parties. This is not only essential for the protection of the public but is also essential to ensure that the standing of the legal profession is not harmed.

In this case the Member did not follow through on his assurance. The Member assured the Court that an unrepresented party's interests would be protected. In the view of this Hearing Committee, the Member should have ensured that the order of Justice Slatter of September 15, 2006 was memorialized on title.

The Member did not do so and, in the result, not only harmed his own standing in the legal profession but also harmed the standing of the legal profession generally.

OTHER MATTERS

[82] The Exhibits and record of proceedings will be available for public inspection, but prior to any disclosure shall be redacted to exclude the name of the Member's client and any information subject to solicitor and client privilege.

[83] There shall be no notice to the profession.

[84] There shall be no referral to the Attorney General.

Dated this 1st day of March, 2011.

Anthony G. Young, Q.C. (Chair)

James A. Glass, Q.C. (Bencher)

Kevin S. Feth, Q.C. (Bencher)